

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 16, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1515-CR

Cir. Ct. No. 2009CF237

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ILIE PAUL HORVATH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Polk County:
MOLLY E. GALEWYRICK, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve
Judge.

¶1 PER CURIAM. Ilie Paul Horvath appeals a judgment convicting him of manufacturing THC. He entered a guilty plea after the court denied his motion to suppress evidence seized during the execution of a search warrant. Although the circuit court's reasoning is not entirely clear, it appears the court

concluded the State presented sufficient evidence to establish probable cause to support the warrant and/or Horvath's landlord consented to the search. Although we disagree with both of these rationales, we affirm the judgment because we conclude the court ultimately reached the correct conclusion, albeit for the wrong reason.

¶2 Investigator Richard Gearhart interviewed Horvath regarding a burglary at Horvath's uncle's residence. Gearhart asked Horvath if he could look in a pole shed for the chainsaw, log splitter and ladders stolen in the burglary. Horvath opened the front door of the pole shed, but would not allow Gearhart to step inside. Gearhart could not see past a partition that blocked his view of most of the shed. Gearhart asked Horvath if he could look in the section past the partition. Horvath declined, explaining "his landlord owned the back part." Gearhart eventually obtained a search warrant and found marijuana growing equipment and small bits of plant material that tested positive for marijuana. Based on discovery of these materials, officers secured an expanded search warrant and found additional marijuana and equipment in the basement of Horvath's residence. Although Horvath's motion to suppress included this additional evidence, he challenges only the first search warrant of the pole shed where incriminating evidence was found and formed a basis for the expanded search warrant.

¶3 Although we disagree with the circuit court's rationales for denying Horvath's suppression motion—again, it found probable cause to support the warrant and consent to search by Horvath's landlord—we need not analyze those issues because we conclude Horvath lacked standing to challenge the search. We can affirm the circuit court's decision if it reaches the right result for the wrong reason. *State v. Alles*, 106 Wis. 2d 368, 391, 316 N.W.2d 378 (1982).

¶4 A defendant lacks standing to vindicate another person's Fourth Amendment rights. *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978). The test for standing to challenge a search turns on whether a person has a legitimate expectation of privacy in the place where the incriminating evidence was found. *State v. Orta*, 2003 WI App 93, ¶11, 264 Wis. 2d 767, 663 N.W.2d 358. A defendant bears the burden of establishing his or her reasonable expectation of privacy by the preponderance of the evidence. *Id.*

¶5 Whether a person has a reasonable expectation of privacy depends on (1) whether the individual has exhibited an actual, subjective expectation of privacy in the area inspected and in the item seized; and (2) whether society is willing to recognize such an expectation of privacy as reasonable. *Id.* Whether a defendant has a subjective expectation of privacy is a question of fact. *State v. Yakes*, 226 Wis. 2d 425, 430 n.3, 595 N.W.2d 108 (Ct. App. 1999). Whether any subjective expectation of privacy was objectively reasonable is a question of law that we decide without deference to the circuit court. *Id.* Factors that determine whether an expectation of privacy is objectively reasonable include: (1) whether the person had a property interest in the premises; (2) whether the person was legitimately on the premises; (3) whether the person had complete dominion and control and the right to exclude others; (4) whether the person took precautions customarily taken by those seeking privacy; (5) whether the person put the property to some private use; and (6) whether the claim of privacy is consistent with historical notions of privacy. *See Orta*, 264 Wis. 2d 767, ¶14.

¶6 Horvath has not met his burden of proving a reasonable expectation of privacy in his landlord's portion of the pole shed. By his own statement to Gearhart, Horvath indicated the part of the pole shed past the partition belonged to his landlord. For this reason, alone, he declined to give Gearhart permission to

search that area. Horvath used the word “owned” when he described his landlord’s interest in the area behind the partition. However, because the landlord “owned” all of the real property, the only reasonable construction of Horvath’s statement is that the landlord maintained complete dominion and control or occupied that section of the building. As a result, Horvath has not established an objective expectation of privacy in his landlord’s portion of the building and therefore lacks standing to challenge the search.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

